

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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DAVID BROWN, :
Plaintiff, : ORDER TO AMEND
-against- : 12 Civ. 9008 (LAP)
MT. SINAI HOSPITAL, :
Defendant. :
-----X

LORETTA A. PRESKA, Chief United States District Judge:

Plaintiff, proceeding *pro se* and *in forma pauperis*, filed this complaint alleging that Mt. Sinai Hospital failed to hire him due to his race. For the following reasons, Plaintiff is directed to file an amended complaint within sixty days of the date of this order.

STANDARD OF REVIEW

The Court has the authority to screen *sua sponte* an *in forma pauperis* complaint at any time pursuant to 28 U.S.C. § 1915(e)(2)(B), and must read *pro se* complaints with “special solicitude” and interpret them to raise the “strongest [claims] that they suggest.” *Triestman v. Fed. Bureau of Prisons*, 470 F.3d 471, 474-75 (2d Cir. 2006) (citations omitted).

BACKGROUND

Plaintiff asserts that Mt. Sinai Hospital declined to hire him because of his race. The complaint does not provide any facts about what occurred, and it does not make clear what race Plaintiff is. Attached to the complaint is a right to sue letter from the Equal Employment Opportunity Commission dated September 21, 2012.

DISCUSSION

Rule 8(a)(2) of the Federal Rules of Civil Procedure requires “a short and plain statement of the claim showing that the pleader is entitled to relief,” and Rule 8(e)(1) requires that each allegation be “simple, concise, and direct.” A complaint must contain sufficient factual matter, accepted as true, to “state a claim to relief that is plausible on its face.” A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged. *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1949 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 127 S. Ct. 1955 (2007)).

Having reviewed Plaintiff’s complaint and granting it the liberal interpretation it is due, the Court finds that she has failed to comply with Rule 8.

Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e to 2000e-17, makes it unlawful “for an employer . . . to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual’s race, color, religion, sex or national origin” Plaintiff alleges that Mt. Sinai Hospital failed to hire him due to his race. It is not clear from the complaint what Plaintiff’s race is, and the complaint does not contain any facts supporting his conclusion that he was the victim of racial discrimination. The Court will grant Plaintiff leave to amend his complaint to provide any facts that support his claim. Plaintiff should explain what exactly occurred and why the facts alleged give rise to an inference of discrimination.

CONCLUSION

The Clerk of Court is directed to assign this matter to my docket and to mail a copy of this order to Plaintiff. Plaintiff is directed to file an amended complaint with the *Pro Se* Office

within sixty days of the date of this order. It must be captioned as an "AMENDED COMPLAINT" and bear the same docket number as this order. An amended complaint form is attached for Plaintiff's convenience. Plaintiff is advised that his amended complaint will completely replace, not supplement, his original complaint. No answer shall be necessary until Plaintiff has complied with this order. If Plaintiff fails to comply with this order within the time allowed or show good cause why he cannot comply, the matter will be dismissed. Once submitted, the amended complaint will be reviewed for substantive sufficiency, and then, if proper, the case shall proceed.

The Court certifies, pursuant to 28 U.S.C. § 1915(a)(3), that any appeal from this order would not be taken in good faith, and therefore *in forma pauperis* status is denied for the purpose of an appeal. *Cf. Coppedge v. United States*, 369 U.S. 438, 444-45 (1962).

SO ORDERED:



LORETTA A. PRESKA
Chief United States District Judge

Dated: December 26, 2012
New York, New York

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

(In the space above enter the full name(s) of the plaintiff(s).)

-against-

(In the space above enter the full name(s) of the defendant(s).
If you cannot fit the names of all of the defendants in the space provided, please write "see attached" in the space above and attach an additional sheet of paper with the full list of names.
Typically, the company or organization named in your charge to the Equal Employment Opportunity Commission should be named as a defendant. Addresses should not be included here.)

This action is brought for discrimination in employment pursuant to: (check only those that apply)

Title VII of the Civil Rights Act of 1964, as codified, 42 U.S.C. §§ 2000e to 2000e-17 (race, color, gender, religion, national origin).

NOTE: In order to bring suit in federal district court under Title VII, you must first obtain a Notice of Right to Sue Letter from the Equal Employment Opportunity Commission.

Age Discrimination in Employment Act of 1967, as codified, 29 U.S.C. §§ 621 - 634.

NOTE: In order to bring suit in federal district court under the Age Discrimination in Employment Act, you must first file a charge with the Equal Employment Opportunity Commission.

Americans with Disabilities Act of 1990, as codified, 42 U.S.C. §§ 12112 - 12117.

NOTE: In order to bring suit in federal district court under the Americans with Disabilities Act, you must first obtain a Notice of Right to Sue Letter from the Equal Employment Opportunity Commission.

New York State Human Rights Law, N.Y. Exec. Law §§ 290 to 297 (age, race, creed, color, national origin, sexual orientation, military status, sex, disability, predisposing genetic characteristics, marital status).

New York City Human Rights Law, N.Y. City Admin. Code §§ 8-101 to 131 (actual or perceived age, race, creed, color, national origin, gender, disability, marital status, partnership status, sexual orientation, alienage, citizenship status).

**AMENDED
COMPLAINT
FOR EMPLOYMENT
DISCRIMINATION**

Jury Trial: Yes No

(check one)

Civ. ()

I. Parties in this complaint:

A. List your name, address and telephone number. Do the same for any additional plaintiffs named. Attach additional sheets of paper as necessary.

Plaintiff Name _____
Street Address _____
County, City _____
State & Zip Code _____
Telephone Number _____

B. List all defendants' names and the address where each defendant may be served. Make sure that the defendant(s) listed below are identical to those contained in the above caption. Attach additional sheets of paper as necessary.

Defendant Name _____
Street Address _____
County, City _____
State & Zip Code _____
Telephone Number _____

C. The address at which I sought employment or was employed by the defendant(s) is:

Employer _____
Street Address _____
County, City _____
State & Zip Code _____
Telephone Number _____

II. Statement of Claim:

State as briefly as possible the facts of your case, including relevant dates and events. Describe how you were discriminated against. If you are pursuing claims under other federal or state statutes, you should include facts to support those claims. You may wish to include further details such as the names of other persons involved in the events giving rise to your claims. Do not cite any cases. If you intend to allege a number of related claims, number and set forth each claim in a separate paragraph. Attach additional sheets of paper as necessary.

A. The discriminatory conduct of which I complain in this action includes: (*check only those that apply*)

Failure to hire me.
 Termination of my employment.
 Failure to promote me.
 Failure to accommodate my disability.
 Unequal terms and conditions of my employment.
 Retaliation.

_____ Other acts (*specify*): _____.

Note: Only those grounds raised in the charge filed with the Equal Employment Opportunity Commission can be considered by the federal district court under the federal employment discrimination statutes.

B. It is my best recollection that the alleged discriminatory acts occurred on: _____.
Date(s)

C. I believe that defendant(s) (*check one*):

_____ is still committing these acts against me.

_____ is not still committing these acts against me.

D. Defendant(s) discriminated against me based on my (*check only those that apply and explain*):

race _____ color _____

gender/sex _____ religion _____

national origin _____

age. My date of birth is _____ (*Give your date of birth only if you are asserting a claim of age discrimination.*)

disability or perceived disability, _____ (*specify*)

E. The facts of my case are as follow (*attach additional sheets as necessary*):

Note: As additional support for the facts of your claim, you may attach to this complaint a copy of your charge filed with the Equal Employment Opportunity Commission, the New York State Division of Human Rights or the New York City Commission on Human Rights.

III. Exhaustion of Federal Administrative Remedies:

A. It is my best recollection that I filed a charge with the Equal Employment Opportunity Commission or my Equal Employment Opportunity counselor regarding defendant's alleged discriminatory conduct on: _____ (*Date*).

B. The Equal Employment Opportunity Commission (*check one*):

_____ has not issued a Notice of Right to Sue letter.
_____ issued a Notice of Right to Sue letter, which I received on _____ (Date).

Note: Attach a copy of the Notice of Right to Sue letter from the Equal Employment Opportunity Commission to this complaint.

C. Only litigants alleging age discrimination must answer this Question.

Since filing my charge of age discrimination with the Equal Employment Opportunity Commission regarding defendant's alleged discriminatory conduct (check one):

_____ 60 days or more have elapsed.
_____ less than 60 days have elapsed.

IV. Relief:

WHEREFORE, plaintiff prays that the Court grant such relief as may be appropriate, including injunctive orders, damages, and costs, as follows: _____

(Describe relief sought, including amount of damages, if any, and the basis for such relief.)

I declare under penalty of perjury that the foregoing is true and correct.

Signed this ____ day of _____, 20____.

Signature of Plaintiff _____

Address _____

Telephone Number _____

Fax Number (if you have one) _____